

**UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

<b>Alliance Companies, et al.</b>	)	
<b>and</b>	)	<b>Docket No. EL02 -65-000</b>
<b>National Grid USA</b>	)	
<b>Alliance Companies, et al.</b>	)	<b>Docket No. RT01 -88-000</b>
	)	

**PROTEST, MOTION AND NOTICES OF INTERVENTION OF  
THE STATE OF MICHIGAN, THE MICHIGAN PUBLIC SERVICE  
COMMISSION, THE ILLINOIS COMMERCE COMMISSION, THE INDIANA  
UTILITY REGULATORY COMMISSION, THE OKLAHOMA CORPORATION  
COMMISSION, THE PUBLIC SERVICE COMMISSION OF THE  
COMMONWEALTH OF KENTUCKY AND THE MINNESOTA DEPARTMENT  
OF COMMERCE**

Pursuant to Rules 211 and 214(2) of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, the State of Michigan, the Michigan Public Service Commission, the Illinois Commerce Commission, the Indiana Utility Regulatory Commission, the Oklahoma Corporation Commission, the Public Service Commission of the Commonwealth of Kentucky and the Minnesota Department of Commerce (collectively "Midwest State Commissions") file their motions to intervene, notices of intervention and joint protest in the above-captioned proceedings. In support thereof, Midwest State Commissions state as follows:

I.

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## II.

### INTERVENTION

The State of Michigan (“Michigan”) is a sovereign state of the United States and intervenes in its *parens patriae* capacity to preserve and protect the health, safety and welfare of its citizens and in its proprietary capacity as a substantial purchaser of electricity. Michigan hereby moves to intervene. The Minnesota Department of Commerce, which is authorized by Min. Stat. § 216A.085 to advocate for gas and electric utility regulation affecting the State of Minnesota, hereby moves to intervene.

The Michigan Public Service Commission, the Illinois Commerce Commission, the Indiana Utility Regulatory Commission, the Oklahoma Corporation Commission and the Public Service Commission of the Commonwealth of Kentucky hereby give their notices of its intervention pursuant to 18 C.F.R. § 385.214(a)(2) (2001).

## III.

### INTRODUCTION

On March 6, 2002, the Alliance Companies<sup>1</sup> and National Grid USA (collectively “the Alliance Companies” or “Petitioners”) petitioned the Commission to issue an order finding that the relationship they propose between themselves and the Midwest ISO (“MISO”) provides an appropriate basis for the participation of Alliance Grid Co in the

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<sup>1</sup> The Alliance Companies are comprised of Ameren Services Company (on behalf of Union Electric Company and Central Illinois Public Service Company), American Electric Power Service Corporation (on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company), The Dayton Power and Light Company, Exelon Corporation (on behalf of Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.), FirstEnergy Corp. (on behalf of American Transmission Systems, Inc., The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company), Illinois Power Company, and Northern Indiana Public Service Company. Two members of the proposed Alliance RTO,

Midwest Regional Transmission Organization (“RTO”). For the reasons discussed herein, Michigan opposes The Alliance Companies’ petition and urges the Commission to dismiss it. On March 5, 2002 Consumers Energy filed a motion in Docket No. RT01 -88-000, *et al.*, requesting the Commission to vacate the Settlement in *Illinois Power Co.* 95 FERC ¶61,183 (2001), *reh’g denied*, 96 FERC ¶61,026 (2001) (Motion for Approval of Alternate Proposal). For the reasons discussed herein, Michigan supports that proposal.

#### IV.

#### SUMMARY OF PETITION FOR DECLARATORY ORDER

According to the Alliance Companies, further negotiations with the Midwest ISO will not be productive and this petition is the final attempt to accommodate Alliance GridCo as a viable transmission business underneath the Midwest ISO umbrella. Specifically, Petitioners assert that if Alliance GridCo is to participate within the Midwest RTO, the Commission must issue an order granting their petition with the following findings:

1. That the functional and operational relationship between the Midwest RTO and Alliance GridCo set forth in the Affidavit of Nick Winsor forms a reasonable basis for the participation of Alliance GridCo within the Midwest RTO;
2. That Alliance GridCo should be permitted to use its own systems for the timely and cost-efficient start of operations;
3. That prices for services purchased by Alliance GridCo from the Midwest ISO should be priced at the Midwest ISO’s reasonably incurred costs, subject to verification and audit;
4. That the transition period rate design and revenue distribution methodology described in the Affidavit of J. Stephen Henderson should be adopted for the Midwest RTO and Alliance GridCo; and

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Dominion Virginia Power Company and Consumers Energy Company (and its affiliate, Michigan Electric Transmission Company) did not join in the Petition.

5. That the Midwest ISO should refund \$60 million, plus interest, to the Illinois Companies.

## V. SUMMARY OF PROTEST

The conditions requested by the Alliance Companies in order to participate in the Midwest RTO demonstrate why negotiations have not been going well with the Midwest ISO; there is a fundamental disagreement between the parties regarding what the Commission has directed them to do. The demands of the Alliance Companies simply do not fit with the views of either the Midwest RTO or the Midwest State Commissions regarding what the Commission intended. For this reason, the Midwest State Commissions agree that prompt Commission action is needed to bring the Alliance Companies under the Midwest RTO umbrella.

The fundamental problem with several aspects of the Alliance Companies proposal -- particularly those related to division of functions -- is that they leave the Alliance Companies, not as an ITC under MISO, but as a quasi -- separate RTO -- an outcome the Commission rejected in its December 20 order in *Alliance Cos.*, 97 FERC ¶ 61,327 (2001). Other issues, such as rate design and compensation for past investments are appropriate for later resolution after hearing and should not be held hostage to the Alliance Companies' demands for acceptance of its model -- a model that would compromise the independence of the Midwest RTO.

The Midwest State Commissions submit that the Commission should take the following actions:

1. Clarify that the *Illinois Power Co.* Settlement is moot with respect to all of its provisions.
2. Reject the Petitioners' attempt to retain numerous functions that are appropriately performed by the RTO exclusively.

3. Establish procedures to determine the appropriate payments by the Alliance Companies for services provided by the MISO, taking into account facilities used by MISO to provide such services and systems provided to MISO by the Alliance Companies.
4. Establish procedures to determine the extent, if any, to which the Alliance Companies' systems developed to date can be used by MISO for providing transmission service under control of the Midwest RTO.
5. Establish procedures to determine the circumstances under which it would be reasonable for MISO to refund some or all of the \$60 million to the Illinois Companies.

## VI.

### PROTEST

The Commission in its December 20, 2001 order in *Alliance Companies*, 97 FERC ¶61,327(2001), made clear that:

The public interest would be best served if the Alliance Companies were to join in Midwest ISO. Of the two proposed RTOs, Alliance RTO and Midwest ISO, we believe that the Midwest ISO, because it is further along in its development and more fully complies with Order 2000, represents the foundation upon which a single Midwest RTO should be built. While we cannot approve Alliance RTO as a stand-alone RTO, we are confident that it can be a successful transco under the Midwest ISO's Appendix I. Therefore, we direct Alliance Companies to explore how their business plan (including National Grid) can be accommodated within the Midwest ISO, e.g., via Appendix I.

97 FERC ¶61,327 at 62,531.

On January 22, 2002, International Transmission Company filed a request that the Commission clarify a potential ambiguity regarding its directives to the Alliance Companies. International Transmission maintained that the December 20 Order directed the Alliance Companies' transmission owners to negotiate with MISO their participation in a Midwest RTO under the terms of Appendix I of the MISO Agreement. "Request for Rehearing of International Transmission Co.," Docket Nos. RT01-88 *et al.*, filed January

22, 2002 at 4 -5. This, International Transmission argued, was the clear intent of the Commission's December 20 Order and was, in fact, reflected in the Commission's press release describing the order. *Id.* A coalition of municipal utilities, end users and consumer groups filed a similar pleading on January 18, 2002. "Motion for Clarification of Coalition of Municipal and Cooperative Users of Alliance Transmission et al.," Docket No. RT01- 88 *etal.* (January 18, 2002).

By contrast, the Alliance Companies argued that the December 20 order merely directed them to work out an acceptable arrangement with MISO that would allow the Alliance Companies to operate under the MISO "umbrella" in some unspecified way -- not necessarily under the terms of Appendix I. *See Answer of Alliance Companies to Motions for Clarification* , Docket Nos. RT01 -88 *etal* (filed February 4, 2002).

In the interim, and pending the Commission's clarification, the Alliance Companies and MISO have spent considerable time in negotiations but have come to an impasse. In their joint letter of March 6, 2002, the State Commissions of Michigan, Kentucky and Illinois responded to a February 19, 2002 report of the Alliance Companies on the status of these negotiations which had laid the blame for lack of agreement on the alleged obstructive presence and opposition of MISO stakeholders. The problem, the three states explained, lay not in the presence of what the Alliance Companies termed "intractable" stakeholders, but due to the following facts: (1) Alliance Transco had not achieved full independence from the transmission owners, and (2) the Alliance Companies, unlike MISO, had never come to accept that it needed to work with its stakeholders to succeed. Joint Letter of the State Commissions of Kentucky, Michigan and Illinois at 1 -2. *Alliance Companies* , Docket No. RT01 -88-016 (March 6, 2002 ).

Accordingly, the States urged the Commission to require that Alliance Grid Co come into the Midwest RTO as an ITC under Appendix I or, if it could not achieve sufficient independence to qualify as an ITC in the short term, the Alliance Companies Transmission owners should instead come into the RTO as transmission owners, again in accordance with the terms of Appendix I:

State Commissions urge the Commission to send a message to Alliance: If it is not clear from the December 19 Order [sic] already, the Alliance Companies have two options for participation in MISO -- they can join as individual transmission owners or they can seek qualification as a Transco under the terms of Appendix I. If they choose the latter option, because it is closer to their "business model," but cannot assure through National Grid the Transco's independence within a reasonable period, then, as stakeholders suggest, the individual Alliance companies should, in the interim, join MISO as transmission owners.

These concerns are discussed below.

**A. The Commission Should Clarify That the *Illinois Power Co. Settlement* Is Moot and Unjust and Unreasonable In Light of the Rejection of the Alliance RTO.**

A fundamental cause of the failure of the settlement process to achieve a resolution of the issues associated with the Alliance Companies joining the Midwest RTO appears to be an erroneous assumption by the Alliance Companies that they can continue to rely upon certain elements of the *Illinois Power Co. Settlement*<sup>2</sup>. For example, the Alliance Companies are demanding that the Midwest RTO be directed to adopt the transition rate design based on the *Illinois Power Co. Settlement* with certain modifications.<sup>3</sup> According to the Alliance Companies, use of that rate design is necessary to compensate the Alliance Companies for lost revenues from the elimination of pancaking.

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<sup>2</sup> *Illinois Power Co., et al.*, 95 FERC ¶61,183 (2001), *reh'g denied*, 96 FERC ¶61,026 (2001).

<sup>3</sup> Approved in Petition at 18.



The Alliance Companies' reliance upon the *Illinois Power Co.* Settlement is totally misplaced. The Commission's rejection of the two -RTO concept rendered all of the underlying elements of the *Illinois Power Co.* Settlement moot. In particular, the *Illinois Power Co.* Settlement rate design was not designed for the much broader Midwest RTO footprint, which now includes many more transmission owners than those covered by the *Illinois Power Co.* Settlement as of February 28, 2001.<sup>4</sup> Nor is use of the *Illinois Power Co.* Settlement necessary to compensate the Alliance Companies for lost revenue due to the elimination of pancaking. The Alliance Companies' calculation of revenue shifts are based on a stale test period that no longer is representative of the revenues which could potentially be lost due to the elimination of pancaking.

In sum, the *Illinois Power Co.* Settlement is moot and its underlying elements should not be adopted outside of the context of a complex settlement. Instead, if the Alliance Companies are to participate under the umbrella of the Midwest RTO, the Commission should direct that the Midwest RTO rate design be applied to the Alliance Companies as well.

**B. The Allocation of Functions Proposed By The Alliance Companies, In Effect, Would Create Two Separate RTO Markets.**

The Alliance Companies argue that their proposed agreement with MISO would have allowed Alliance Grid Co, under management by National Grid, to operate under the "umbrella" of the Midwest RTO. The overriding defect in the Alliance Companies' argument as noted earlier, is that it relies on the "umbrella" construct to justify a structure that, in effect preserves two RTOs. In other words, the Alliance Companies hope to

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<sup>4</sup> Although Alliance now "commits" to include new members under the *Illinois Power Co.* Settlement rate design, such offer fails to recognize that the settlement rate design was based on the billing determinant of a smaller group of members.

achieve, under the umbrella of the Midwest RTO, an operational scope and configuration that this Commission explicitly rejected in its December 20 Order. The Alliance Companies' proposal is blatantly inconsistent with two fundamental principles under Order No. 2000: (1) Parties, both inside and outside the RTO, must be able to transact anywhere within the RTO's boundaries under a single tariff<sup>5</sup> and (2) if an ITC is to assume any RTO functions it must be fully independent of any market participants.

The Alliance Companies' proposal calls for a separate tariff for transmission into or out of the Alliance Companies' systems from sellers or buyers in adjacent markets, such as PJM. This proposal plainly preserves pancaking and erects a barrier against the Midwest ISO members from competing in PJM markets. As the Alliance Companies describe the proposal, it wants its own tariff for transactions that "drive into or out of Alliance GridCo provided the transaction does not require reservations and scheduling over non -Alliance Companies' transmission facilities within the Midwest RTO." Appendix C. For example, suppliers seeking to sell into the Alliance Companies from PJM or out of the Alliance Companies into PJM would pay a different rate and have a separate tariff from buyers in the rest of the Midwest RTO seeking supplies from PJM or suppliers in PJM looking to sell to buyer in the non -Alliance part of MISO territory.<sup>6</sup> Those sellers and buyers would pay the MISO rate and a separate Alliance tariff rate. While the Alliance Companies assert that their proposal is no different than the agreement that MISO has entered into with TransLink to parcel functions to an ITC under Appendix I, it acknowledges in its Appendix C comparison of the TransLink agreement

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<sup>5</sup>The question of whether ITCs may also offer alternative tariff services is subject to Commission review on a case-by-case basis. See, e.g. *International Transmission Co.*, 97 FERC ¶61,328 at 62,549 (2001).

<sup>6</sup>In effect, Alliance would seek to perpetuate the two RTO rate structure under the *Illinois Power Co.* Settlement.

and its proposal that the TransLink owners are not insisting on this unsustainable type of tariff limitation.<sup>7</sup>

The Alliance Companies' proposal fares no better in meeting the Order No. 2000 independence test. The Alliance Companies propose an allocation of functions between Alliance GridCo and the Midwest RTO that has not been approved and could not be approved unless the Commission were to determine that Alliance GridCo qualifies as an ITC *and* that its proposed dissection of functions does not delegate too much control and responsibility to Alliance GridCo. Indeed, as to the Alliance Companies' notion of a two tariff model discussed above, Michigan cannot conceive of a basis on which the Commission could approve of that aspect of its proposal.<sup>8</sup>

The Alliance Companies' claim that its proposal for Alliance GridCo to come under the MISO umbrella is the only way to integrate the Alliance Companies' member systems into MISO within a reasonable time frame. This position reflects the Alliance Companies' fixation on preserving its RTO model and ignores the fact that Alliance TOs could be integrated into MISO immediately as TOs.<sup>9</sup> This is not an academic point. There remain substantial questions about the independence of Alliance GridCo and the continuing role of transmission owners (who have not divested their interests in

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<sup>7</sup> Appendix C to the Alliance Petition for Declaratory Order purports to compare Alliance GridCo's offer to MISO with TransLink's Appendix I proposal. According to Alliance, if FERC determines that TransLink does not qualify as independent, it will not be considered an Appendix I ITC and will instead be treated as a transmission owner. The Alliance Companies' characterization of the TransLink agreement is inaccurate.

<sup>8</sup> Alliance's proposal to charge a separate rate for drive in and drive out transactions within the Alliance footprint is, in this respect, dramatically different from proposals that would afford customers within an ITC to choose either the RTO-wide rate or the ITC tariff rate. See *International Transmission Company*, 97 FERC ¶61,328 at 62,548 (2001).

<sup>9</sup> Alliance says that without having matters its way, Alliance TOs' participation in MISO will be delayed for several years while MISO adapts its software to the Alliance GridCo. There is no need for delay. Alliance GridCo can only become part of MISO if it meets Order 2000 independence criteria. If it cannot do so, then Alliance TOs can come into MISO immediately. Alternately, it is conceivable that certain Alliance TO's may seek to join other RTO's, such as PJM. The Commission should provide guidance on this alternative

generation) in Alliance GridCo, even after National Grid assumes various management functions. *See, e.g. Alliance Cos. , Docket No. RT01 -88-016, et al., February 26, 2002 Letter of Samuel C. Randazzo, Esq. On behalf of Industrial Users et al.*

**C. The Commission Should Establish Procedures to Determine the Appropriate Payments By the Alliance Companies for Joining, and Receiving Services From, the Midwest RTO**

The Alliance Companies claim that they should be responsible only for the incremental costs of those services that Alliance GridCo will be purchasing from the Midwest RTO, and that the Midwest ISO should not be allowed to include historic embedded costs in the price it charges to Alliance GridCo.

These claims raise two separate cost issues: (1) whether the services provided by Midwest RTO should be unbundled and priced according to functions purchased by ITCs; and (2) whether there is any basis for exempting the Alliance Companies from paying their fair share of MISO's historic embedded costs.

The Midwest State Commissions agree that MISO's services should be unbundled so that ITCs pay for those services that they use. The extent of necessary unbundling, however, cannot be determined until the Commission resolves the issues relating to the appropriate allocation of RTO functions discussed in Section VI, Part B of this Protest. Once it is determined which functions may be performed by Alliance GridCo, then the costs and rates for such functions can and should be unbundled from the functions which MISO will be performing for all members.

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by making clear that the resulting RTO boundaries and geographic scope must be logical and promote, rather than create barriers to, competition.

<sup>10</sup>This unbundling issue, in the context of other ITCs, is currently set for hearing in Midwest ISO Docket No. ER02 -111-000.97 FERC ¶ 61,268 (2001). Presumably, the outcome of that case could control here.

There is no basis in the current record for exempting the Alliance Companies from paying their fair share of MISO's historic embedded costs. Instead of satisfying its burden of explaining why certain MISO start-up costs and facilities will not be used to provide service, the Alliance Companies simply claim that they have incurred approximately \$90 million in start-up costs and that the Midwest ISO has incurred \$160 million in start-up costs. Therefore, according to the Alliance Companies, it would be inequitable to require the Alliance Companies to be forced to subsidize the Midwest ISO by having Midwest ISO's historically embedded costs allocated to them, particularly where the Alliance Companies have been "more efficient" (comparing \$90 million to \$160 million).<sup>11</sup>

The major flaw in the Alliance Companies' position is that it assumes, without support, that MISO has expended money on start-up costs and facilities that will not be used to provide service to Alliance GridCo. Second, the Alliance Companies assume, without support, that all of its \$90 million were spent on facilities which cannot be used by the Midwest RTO to provide service to the Alliance Companies.

The resolution of the cost recovery issues associated with MISO and the Alliance Companies start-up and historic embedded costs should begin by placing the burden on the Alliance Companies of proving that MISO has incurred embedded costs for facilities that are not used to provide service to the Alliance Companies. In addition, the Alliance Companies should be required to demonstrate that the Alliance Companies have incurred embedded costs for facilities that could be used by MISO to provide RTO services. The result of such process could form a basis for assigning embedded fixed cost responsibility to the Alliance Companies, including the allocation of an appropriate credit for any

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<sup>11</sup>The Alliance Companies' Petition at 12-13.

Alliance facilities that could be used by MISO to provide the RTO services to the Alliance Companies.<sup>12</sup>

To the extent costs incurred by MISO or the Alliance Companies are determined to be stranded and not used and useful in providing service, then procedures need to be established to determine a fair allocation of such costs, including an analysis of whether they were prudently incurred. On this latter point, the Alliance Companies' incurrence of substantial costs after the Commission's Order issued on July 12, 2001,<sup>13</sup> directing the Alliance Companies, "from the date of this Order" to establish an independent board "to make all business decisions for the RTO" raises serious questions regarding the prudence of the Alliance Companies' actions. See, e.g. *Minnesota Power & Light Co.*, 11 FERC ¶ 61,312 at 61,645 (1980); *Public Service Company of Colorado*, 90 FERC ¶ 61,285 (2000).

The Midwest State Commissions recognize that these cost issues raise factual questions requiring further development of a record. In this respect, the Midwest States Commissions suggests that it may make sense to defer the unbundling issues until the Commission resolves the allocation of RTO functions. At that juncture, the parties should be directed to utilize settlement procedures to negotiate a fair resolution of these cost issues which takes into account the extent to which MISO's embedded costs relate to

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<sup>12</sup>The Midwest State Commissions are concerned about the increasing level of investment in software models by MISO and Alliance and the extent to which such investments are duplicative, or worse, mutually exclusive. While the Midwest State Commissions support efforts to integrate Alliance's own systems into the MISO infrastructure in order to minimize further waste and duplication, the Midwest State Commissions do not support Alliance's request to allow it to manage and operate its own systems. Obviously, it would not be appropriate to allow an entity which has not satisfied the independence criteria and whose systems were developed without input from a stakeholder process and review by an independent board to have control over operating systems. The extent to which Alliance is allowed to retain and operate its own systems must be closely reviewed by the Commission in connection with the Commission's determination of the appropriate allocation of RTO functions.

<sup>13</sup> *Alliance Companies, et al.*, 96 FERC ¶ 61,052 at 61,135 (2001).

facilities used to serve the Alliance Companies. In the meantime, the Commissions should promptly commence a process to determine a reasonable allocation to the Alliance Companies of the embedded fixed costs of MISO's facilities used to serve the Alliance Companies.

**D. The Alliance Companies' Demand for Return of the \$60 million Paid by the Illinois Companies Is Internally Inconsistent With Its Other Positions**

The Alliance Companies claims that the \$60 million paid by the Illinois Companies as an exit fee to MISO should be returned, with interest, if such companies rejoin the Midwest RTO as part of Alliance Grid Co.

The Midwest Commissions agree, at least conceptually, that if a company pays an exit fee and then returns as a customer, there may be a basis for refunding some or all of the exit fee to that customer. The level of refunds, of course, would depend on the cost responsibility assumed by the returning customer. In this respect, the position taken by the Alliance Companies that they should be responsible only for incremental costs is inconsistent with the return of the \$60 million exit fee.

The Illinois Companies paid the Midwest ISO \$60 million in order to compensate the Midwest ISO for costs incurred on behalf and in contemplation of serving the Illinois Companies. The Illinois Companies are not, however, proposing to return as direct members of the Midwest ISO and to pay a fully allocated share of all of the Midwest ISO's embedded costs. Instead, the Illinois Companies are proposing to join Alliance. This distinction has two important consequences. First, the Alliance Companies are proposing to purchase and pay only for a very limited number of RTO services from the Midwest RTO. Second, the Alliance Companies are proposing to pay none of the embedded fix costs of those services provided to it. Under this structure, the Midwest

ISO would be receiving little, if any, reimbursement of costs incurred to serve the Illinois' Companies prior to the ir departure from the Midwest ISO. Therefore, there wouldbenoequitable reasonforrefundingthefull\$60million.

Inshort,theresolutionofthisissuemustbedeferreduntiltheCommission determinestheallocationofRTOfunctionsandtheunderlying costresponsibilityofthe AllianceCompaniesfortheembeddedfixedcostsoftheMidwestISO.Onlyafter determiningtheIllinoisCompaniesresponsibilityforfixedcostscananequitablecasebe supportedforrefundingsomeorallofthe\$60million.

## **CONCLUSION**

ThecurrentcontroversyillustrateswhythetimehascomefortheCommissionto definethefunctionalsplitbetweenwhattheMidwestRTOmustdoandwhattheAlliance Companiesmaydo,iftheywishtojoinasasubsidiaryorganization,inthe contextofan arrangementthatresultsinaseamlessmarketplacewithoutpancaking.TheCommission isaskedtoprovidethisguidancewithrecognitionthatthe *IllinoisPowerCo.* Settlement isbasedonpremises thatnolongerapply,thattheintegrationof theAllianceCompanies intoaMidwestRTOrequiresassessmentofwhatfacilitiesareusedtoservetheresulting



expanded entity and how costs thereof should be recovered, and that the actual costs to be recovered can and should await resolution of these precedent matters.

**Respectfully submitted on behalf of:**

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Dated: March 28, 2002

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing document by first class mail upon each party on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 28<sup>th</sup> day of March 2002.

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David D' Alessandro